

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

KENNETH CHAMBERLAIN, JR., AS THE  
ADMINISTRATOR OF THE ESTATE OF  
KENNETH CHAMBERLAIN, SR.,

Plaintiff,

vs.

CITY OF WHITE PLAINS; WHITE PLAINS  
HOUSING AUTHORITY; P.O. ANTHONY  
CARELLI; P.O. STEVEN HART; P.O. F/N/U  
LOVE; P.O. F/N/U DEMCHUK; P.O. F/N/U  
MARKOWSKI; SERGEANT STEPHEN  
FOTTRELL; DETECTIVE PETER MARTIN;  
LIEUTENANT JAMES SPENCER,

Defendants.

Civil Action No.

**COMPLAINT**

**JURY TRIAL DEMANDED**

By and through his attorneys Newman Ferrara LLP, Mayo Bartlett, and Abdulwali Muhammad, Plaintiff Kenneth Chamberlain, Jr., as the Administrator of the Estate of Kenneth Chamberlain, Sr., alleges upon knowledge, information, and/or belief as follows:

**PRELIMINARY STATEMENT**

1. This is a civil action seeking monetary relief against Defendant City of White Plains (“White Plains”); White Plains Housing Authority (“Housing Authority”); and certain employees of White Plains, *to wit* Patrol Officer Anthony Carelli (“Carelli”), Patrol Officer Steven Hart (“Hart”); Patrol Officer Love (“Love”); Patrol Officer Demchuk (“Demchuk”); Patrol Officer Markowski (“Markowski”); Sergeant Stephen Fottrell (“Fottrell”); Detective Peter Martin (“Martin”) and Lt. James Spencer (“Spencer”).

2. It is alleged that the Defendants, acting jointly and severally, committed a series of unlawful acts that resulted in the shooting death of Kenneth Chamberlain, Sr., a 68 year old

African-American man, in his home in the early morning hours of November 19, 2011 and, in so doing, deprived Mr. Chamberlain, Sr. of rights secured by the United States Constitution and the State of New York.

### **PARTIES**

3. Plaintiff Kenneth Chamberlain, Jr. is a citizen of the United States and a resident of Westchester County, New York. Plaintiff is the Administrator of the Estate of Kenneth Chamberlain, Sr. Letters of Administration were granted to Plaintiff by the Westchester Surrogate's Court on February 9, 2012.

4. Defendant White Plains is a duly constituted municipal corporation of the State of New York, located in Westchester County, New York.

5. Defendant White Plains Municipal Housing Authority is a municipal corporation that provides low-income housing in White Plains.

6. Defendants Carelli, Hart, Love, Demchuk, Markowski, Fottrell, Martin and Spencer were at all relevant times employees of the White Plains Police Department. At all times relevant to the facts of the Complaint, said Defendants were acting under color of law and within the scope of their employment by White Plains.

### **JURISDICTION AND VENUE**

7. Subject Matter Jurisdiction. The Court has jurisdiction pursuant to 28 U.S.C. §1331 and §1343. Plaintiff further invokes the supplemental jurisdiction of this Court under 28 U.S.C. §1367 to hear and decide claims arising under state law.

8. Venue. Venue in the Southern District of New York is proper under 28 U.S.C. §1391(b) because a substantial part of the events giving rise to this action occurred within the district.

### **FACTUAL ALLEGATIONS**

9. On November 19, 2011, at approximately 5 a.m., 68 year old Marine Corps veteran Kenneth Chamberlain, Sr. was in his apartment at 135 S. Lexington Avenue in White Plains, New York when his medical aid device was accidentally triggered.

10. The medical aid device was provided to Mr. Chamberlain, Sr., and monitored 24 hours a day, by a company called Life Aid because of Mr. Chamberlain, Sr.'s serious health problems.

11. Life Aid attempted unsuccessfully to contact Mr. Chamberlain, Sr. via a two way communication device that immediately began recording communications to and from his apartment when the medical aid device was activated.

12. When Mr. Chamberlain, Sr. did not respond to the Life Aid operator's queries, Life Aid contacted the White Plains Department of Public Safety ("WPDPS"). WPDPS directs and controls White Plains' police, firefighters, emergency technicians, and emergency service unit personnel.

13. Upon receiving the call, an ambulance was dispatched to the scene along with the patrol car of Defendant Love.

14. The dispatcher then conducted a computer history check of Mr. Chamberlain, Sr. and his home location and subsequently downgraded the ambulance call response and dispatched several other police units who were advised that there had been several previous "emotionally disturbed person calls" at the location.

15. Defendant Lt. Spencer ordered Defendants Carelli and Hart to respond to Mr. Chamberlain, Sr.'s home, with tactical gear, even though they were off-shift when Life Aid called in the medical aid.

16. Carelli and Hart, members of the White Plains Police Department's ("WPPD") Neighborhood Conditions Unit, were still at headquarters after their shift was over because they were completing reports for a late arrest.

17. The Neighborhood Conditions Unit is a tactical unit of the WPPD assigned to patrol the commercial district along Mamaroneck Avenue where several bars and restaurants are located as well as the nearby municipal housing complex, Winbrook Houses, where Mr. Chamberlain, Sr. lived.

18. The White Plains Housing Authority, at all relevant times, had an agreement with the White Plains Police Department that provided to the Neighborhood Conditions Unit a master key affording them access to all of the apartments in the Winbrook Houses, including Mr. Chamberlain, Sr.'s apartment, without the residents' knowledge or permission.

19. Immediately after the police officers arrived at Mr. Chamberlain, Sr.'s home, they began banging loudly on his door and ordering him to let them in.

20. Mr. Chamberlain, Sr. calmly told the officers, through the door, that he did not call them and that he was okay.

21. Nevertheless, the police officers continued to bang on his door and insist that he open it.

22. The Life Aid operators, through the two-way communication device in the apartment, could hear the loud banging of the police officers and Mr. Chamberlain, Sr.'s expressions of reluctance to open the door to them.

23. The Life Aid operators told Mr. Chamberlain, Sr. that if the officers could tell that he was okay they would go away.

24. Mr. Chamberlain, Sr. then continued to speak to both the Life Aid operators and

the police officers, without opening his door, insisting that he was okay and not in need of assistance.

25. The Life Aid operators, reassured by Mr. Chamberlain, Sr. that he was not in need of assistance, attempted to cancel the medical aid call with the WPDPS dispatcher. However, the police officers on the scene refused Life Aid's request and advised that entry would be made into the apartment.

26. Despite both Mr. Chamberlain, Sr. and Life Aid's attempts to cancel the medical aide call, the police continued relentlessly in their attempts to forcibly gain entry to the apartment.

27. Life Aid, using their emergency contact list for Mr. Chamberlain, Sr., called his sister who lives in North Carolina. She advised Life Aid that her daughter Tonyia Greenhill, Mr. Chamberlain, Sr.'s niece, lived in the same apartment building and was on her way downstairs to assist in resolving the situation.

28. However, the police officers on the scene refused to accept Ms. Greenhill's offer to assist or to allow her to communicate with her uncle as he remained alone and afraid inside his apartment.

29. The Life Aid recordings document Mr. Chamberlain, Sr.'s growing fear and agitation as the onslaught continued and escalated for over one hour.

30. During the time that the police were outside Mr. Chamberlain, Sr.'s home (for well over an hour), they continuously banged loudly on his door and on an outside window, and continued to speak to him loudly, threateningly, disrespectfully, and mockingly. At least one officer taunted him with racial slurs.

31. One of the racial slurs came from Defendant Hart, who stood outside the window

of Mr. Chamberlain, Sr.'s first floor apartment and called him a nigger.

32. The master key provided by Defendant Housing Authority to the Neighborhood Conditions Unit was used by the police officers to unlock Mr. Chamberlain, Sr.'s door, but a safety lock he had in place prevented the door from being opened more than a few inches.

33. However, the door did open sufficiently for the officers to visually confirm that Mr. Chamberlain, Sr. was not in need of medical assistance.

34. As the officers forced open his door, Mr. Chamberlain, Sr. communicated to the Life Aid operators that he was in fear for his life and that he had observed several officers outside his door, with shotguns and handguns drawn.

35. The Life Aid recordings clearly indicate that as the incident progressed and escalated, so did Mr. Chamberlain Sr.'s fear and agitation, culminating to the point where he suffered delusions and hallucinations, including calling out to report to "Mr. President" that he was under attack. Mr. Chamberlain, Sr. called out to God to protect him and begged Life Aid to continue recording because he believed the police were going to kill him.

36. Mr. Chamberlain, Sr. warned that they should leave his door alone and not enter his apartment, clearly indicating to the police that he believed they were going to kill him, that they had kidnapped his wife and raped his daughter.

37. As the siege continued, Mr. Chamberlain, Sr. repeatedly expressed the belief that the officers were there to hurt him, not to help him, and that because they intended to kill him he needed to protect himself.

38. After over one hour of the police unsuccessfully attempting to gain entry into the apartment, Defendant Demchuk was ordered to violently breach Mr. Chamberlain, Sr.'s door. Defendant Love assisted in the removal of Mr. Chamberlain Sr.'s door.

39. As the door was being pushed forcibly off its hinges, Mr. Chamberlain, Sr. repeatedly begged the officers to stop their actions, chanting “Don’t” and “Leave” over and over again. He expressed his fear that the police officers were going to take him to White Plains police headquarters, beat him and kill him.

40. As the door fell open, a camera on a Taser being held by Defendant Fottrell recorded Mr. Chamberlain, Sr. standing approximately six to eight feet away from the doorway wearing only a pair of boxer shorts.

41. After the door had been removed, Defendant Fottrell stood in the doorway and prepared to discharge his Taser at Mr. Chamberlain, Sr., who at all times remained in his apartment.

42. Defendant Fottrell discharged the Taser at least twice, but did so in a negligent manner, whereby both electrical prongs did not enter Mr. Chamberlain, Sr.’s body.

43. Because of Fottrell’s negligent discharge of the Taser, Mr. Chamberlain, Sr.’s flesh was severely burned and electric shocks were repeatedly sent throughout his body, but the Taser failed to incapacitate him.

44. Video from the Taser recorded its tortious and torturous effects on Mr. Chamberlain, Sr.

45. After the improper use of the Taser by Fottrell failed to fell Mr. Chamberlain, Sr., Defendant Martin grabbed a shotgun being held by Defendant Markowski that contained beanbag ammunition.

46. Martin shot one bean bag at Mr. Chamberlain, Sr.’s thigh followed by two more shots to his chest before entering the apartment and shooting again.

47. Mr. Chamberlain, Sr. fell backwards and went to the ground.

48. Without pausing after the last beanbag was discharged, Defendant Carelli, who had also entered Mr. Chamberlain, Sr.'s apartment, immediately and without warning fired the fatal shot from his handgun.

49. The autopsy of the Mr. Chamberlain, Sr.'s body revealed several abrasions caused by the Taser and the beanbags.

50. The autopsy also revealed that the fatal bullet had entered Mr. Chamberlain, Sr.'s right upper arm and that the bullet passed through his lungs, spine and ribs in a straight line.

51. The autopsy also confirmed that Mr. Chamberlain, Sr., when he was killed, was taking several medications for his various medical conditions but had no drugs of abuse in his system.

52. The defendant police officers who responded to Mr. Chamberlain, Sr.'s apartment acted, jointly and severally, in an unreasonable manner in responding to the medical aid dispatch.

53. At no time was the manner and/or degree of force used by the officers justified by the circumstances. In fact, the wildly disproportionate use of force employed by the officers was excessive and unwarranted.

54. At no time did Mr. Chamberlain, Sr. leave his apartment or initiate contact with any of the police officers.

55. The entry of the defendant police officers into Mr. Chamberlain, Sr.'s apartment was unwarranted and illegal under the circumstances.

56. The defendant police officer's threatening, taunting, mocking and racist actions toward Mr. Chamberlain, Sr. reasonably caused him to fear for his safety and life.

57. The defendant police officers failed to reasonably respond to Mr. Chamberlain, Sr.'s continuous expressions of fear for his safety and life, and ignored his repeated



communications that he was okay and wished the officers to leave him alone.

58. Once it became clear that the defendants' actions were causing Mr. Chamberlain, Sr. to become increasingly fearfully and agitated, culminating in delusions, hallucinations and flashbacks from his military service, defendants took no actions to defuse and resolve the situation that their own actions had brought about.

59. Instead, defendants took actions that exacerbated the situation, used excessive and unnecessary force, and, ultimately caused Mr. Chamberlain, Sr.'s death.

60. White Plains Housing Authority, by providing a master key to the Neighborhood Conditions Unit and granting them unbridled authority to access apartments within the Winbrook Houses, including Mr. Chamberlain, Sr.'s, proximately caused injury to Plaintiff.

61. The policies and procedures, training, and supervision of White Plains, its Department of Public Safety and Police Department, proximately caused the injury to Mr. Chamberlain, Sr. by failing to train, supervise, and discipline its officers regarding: properly responding to calls for medical assistance; the use of excessive force; interacting with elderly and/or emotionally disturbed residents, and; policing in a non-racist manner;

62. Said policies, training, and/or failure to adopt policies or to adequately train its employees aforementioned resulted in the physical and psychological torture, and killing, of Kenneth Chamberlain, Sr.

63. A Notice of Claim pursuant to New York General Municipal Law § 50-e was timely served upon Defendant White Plains on February 25, 2012. More than thirty days have elapsed without the matter being resolved by White Plains.

## **FEDERAL CLAIMS FOR RELIEF**

### **FIRST CAUSE OF ACTION**

*(Against Defendants Carelli, Hart, Love, Demchuk, Fottrell, Martin, Markowski, Spencer, and White Plains For Use of Excessive Force)*

64. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

65. At the time of the incident complained of herein, Defendants Carelli, Hart, Love, Demchuk, Fottrell, Martin, Markowski, and Spencer were all employees of the Defendant White Plains, and acted under color of law as police officers.

66. The aforesaid actions of said Defendants were an unreasonable and unnecessary use of excessive force and unlawful entry into Mr. Chamberlain Sr.'s home that deprived him of rights, privileges and immunities secured by the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, in violation of 42 U.S.C. §1983.

### **SECOND CAUSE OF ACTION**

*(Against Defendants Fottrell, Carelli, Love, Demchuk, Martin, Markowski, Spencer and Hart For §1983 Conspiracy)*

67. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

68. Defendants Fottrell, Carelli, and Hart at all times relevant to the Complaint were members of the Neighborhood Conditions Unit ("NCU"). Said unit patrolled the bars, restaurants and social establishments located along Mamaroneck Avenue in downtown White Plains and the Winbrook Houses, a predominantly African-American development, where Mr. Chamberlain, Sr. resided.

69. Prior to the incident complained of herein, Defendants Carelli, Hart and Fottrell,

each, had federal civil right lawsuits filed against them wherein it was alleged that they had, *inter alia*, used excessive force, racial or ethnic slurs, and engaged in other deprivations of the constitutional rights of African-Americans, Latinos, and other minority groups members while working under color of law as members of the NCU.

70. At the time of the incident, said Defendants, and the other defendant police officers, entered into a conspiracy to deprive Kenneth Chamberlain, Sr. of his rights secured by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution in violation of §1983.

71. Said Defendants engaged in actions in furtherance of the aims of said conspiracy, including, but not limited to, unlawful entry into Mr. Chamberlain Sr.'s apartment, the use of excessive, unreasonable and deadly force, the use of racial slurs, and other words designed to demean, humiliate, cause him severe emotional distress, and to place him in fear for his life.

72. As a result of the conspiracy and actions aforementioned, Kenneth Chamberlain, Sr. experienced severe emotional distress, fear of impending death, conscious pain and suffering, assaults and batteries, and wrongful death, in violation of the aforementioned constitutional and civil rights.

### **THIRD CAUSE OF ACTION**

*(Monell Claims Against Defendants White Plains and Housing Authority)*

73. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

74. The injuries sustained by Kenneth Chamberlain, Sr., were the result of a policy, practice, custom and/or usage of Defendant White Plains of hiring and/or retaining officers without properly screening such employees as to racial animus and propensity for violence or

failing to adhere such policies as they may have regarding these issues.

75. The injuries sustained by Kenneth Chamberlain, Sr. were the result of a policy, practice, custom and/or usage of Defendant White Plains of failing to investigate, discipline or retrain police officers who had engaged in prior acts of excessive force and racially motivated conduct or behaviors.

76. The injuries sustained by Kenneth Chamberlain, Sr. were the result of the failure of Defendant White Plains to have policies for appropriately responding to service calls involving health emergencies or emotionally disturbed persons.

77. The injuries sustained by Kenneth Chamberlain, Sr. were the result of the failure of Defendant White Plains to train its police officers how to appropriately respond to service calls involving health emergencies or emotionally disturbed persons.

78. The injuries sustained by Kenneth Chamberlain, Sr. were the result of the failure of Defendant White Plains and its Department of Public Safety to adequately supervise police officers in connection with service calls involving health emergencies or emotionally disturbed persons.

79. The injuries sustained by Kenneth Chamberlain, Sr. were the result of the failure of Defendant White Plains and its Department of Public Safety to adequately train its officers in the continuum of force, the use of physical force, deadly force and Tasers.

80. As a result of the aforementioned policies, practices, custom, usages, and failures of White Plains, and its deliberate indifference to its duty to have such policies to ensure the safety of the residents of White Plains, Mr. Chamberlain, Sr. sustained the injuries and deprivations aforementioned.

81. The injuries sustained by Mr. Chamberlain, Sr. were the result of the policy,

practice, custom or usage of the Defendant Housing Authority to provide to the NCU or other police officers the master keys to the apartments of its tenants, without their knowledge or consent, and without procedures for how such keys were to be used.

82. As a result of the aforementioned policies, etc., of the Defendant Housing Authority Mr. Chamberlain Sr., sustained the injuries and deprivations aforementioned.

#### **FOURTH CAUSE OF ACTION**

*(Supervisory Liability Against Defendants Fottrell And Spencer)*

83. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

84. Defendants Fottrell and Spencer were responsible for supervising the police officers who responded to the scene at Mr. Chamberlain's residence. Said Defendants failed to properly supervise said officers and took no actions that would have prevented the injuries sustained by Mr. Chamberlain.

85. As a direct and proximate cause of said Defendants failure to properly supervise their subordinates, Mr. Chamberlain's constitutional rights were violated as aforementioned in violation of 42 U.S.C. §1983.

#### **STATE CLAIMS FOR RELIEF**

##### **FIFTH CAUSE OF ACTION**

*(For Conscious Pain And Suffering Against All Defendants)*

86. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

87. Defendant Carelli without just cause, or provocation, used deadly physical force against Mr. Chamberlain, Sr. The use of such force was not justified or warranted under the

circumstances and constituted unreasonable and unnecessary force.

88. The use of such force did not immediately cause Mr. Chamberlain's death. As a result, he suffered and experienced a fear of impending death, severe emotional distress, and conscious pain and suffering.

89. The Defendant White Plains is responsible for the actions of Defendant Carelli that were taken in the scope of his employment as a police officer.

90. The Housing Authority bears responsibility for the injuries aforesaid as a result of its delivery of master keys for the apartments at the Winbrook Houses to police officers employed by White Plains, without the consent or knowledge of the tenants and without proper procedures as to how and when the keys would be used by the police to gain entry to the apartments.

## **SIXTH CAUSE OF ACTION**

*(For Wrongful Death Against All Defendants)*

91. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

92. Defendant Carelli, acting within the scope of this employment, caused the death of Mr. Chamberlain by the use of a firearm, without cause or justification.

93. Said actions render him liable for the wrongful death of Mr. Chamberlain, Sr.

94. The individual defendant police officers acted in concert with Defendant Carelli in the siege of Mr. Chamberlain, Sr.'s apartment, cooperated or assisted in the breach of his apartment door, used excessive force against Mr. Chamberlain, Sr. and/or taunted or assaulted him; thereby aiding in Defendant Carelli's wrongful actions, and are responsible for Mr. Chamberlain's death, in whole or in part.

95. Defendant White Plains is responsible for the actions of Defendant Carelli and actions of the other individual police officer defendants that were taken in the scope of his employment as a police officer.

96. The Housing Authority bears responsibility for the injuries aforesaid as a result of its delivery of master keys for the apartments at the Winbrook Houses to police officers employed by White Plains, without the consent or knowledge of the tenants and without proper procedures as to how and when the keys would be used by the police to gain entry to the apartments.

#### **SEVENTH CAUSE OF ACTION**

*(Against Defendants Carelli, Hart, Love, Demchuk, Fottrell, Martin, Markowski, Spencer, and White Plains For Assault and Battery)*

97. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein

98. The actions of Defendants Fottrell, Martin and Carelli, Hart, Love, Demchuk, Markowski, and Spencer were intentional, malicious and were committed with wanton disregard for the rights of Mr. Chamberlain, Sr.

99. The actions of said Defendants were unjustified and unnecessary in the performance of their duties as police officers and were unreasonable and unwarranted and constituted an excessive use of force.

100. The actions aforesaid constituted unlawful assaults and batteries upon Mr. Chamberlain, Sr.

101. The said Defendants acted in concert and conspired to commit said assaults and batteries upon Mr. Chamberlain, Sr.

102. As a result of said conduct of said Defendants, Mr. Chamberlain, Sr. sustained serious and severe injuries, both physical and emotional.

103. Defendant White Plains is responsible for the actions of said Defendants as the acts were committed within the scope of their employment as police officers.

### **EIGHTH CAUSE OF ACTION**

*(For Negligence Against All Defendants)*

104. Plaintiffs incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein

105. The individual officers, acting within the scope of their employment, negligently discharged their duties and thereby caused Mr. Chamberlain, Sr. to sustain the injuries and deprivations aforementioned.

106. The acts of negligence of said officers included, but are not limited to, taunting, mocking, using racial slurs, threatening language, displaying their weapons without cause, forcibly breaking the door of Mr. Chamberlain, Sr.'s door, negligently discharging the Taser, and other conduct that was improper under the circumstances and caused Mr. Chamberlain, Sr. to become agitated, non-cooperative, and emotionally distraught.

107. Defendant White Plains is responsible for the negligence of its officers committed within the scope of their employment

108. Defendant White Plains was negligent by failing to properly train or supervise its officers in how to properly respond to service calls involving emergency medical situations or involving emotionally disturbed persons.

109. Defendant White Plains was negligent by failing to properly train or supervise its police officers in the use of Tasers, physical force, deadly force, or the continuum of force.



110. Defendant Housing Authority was negligent by providing master keys to the apartments of its tenants, without their knowledge or consent and without proper procedures to ensure that the master keys were not improperly used by police officers.

111. The aforementioned acts of negligence proximately caused the injuries sustained by Mr. Chamberlain, Sr.

### **PUNITIVE DAMAGES**

112. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

113. The acts of the individual Defendants were willful, wanton, malicious and oppressive and were motivated solely by a desire to harm Mr. Chamberlain, Sr. without regard for his well-being and were based on a lack of concern and ill-will towards Mr. Chamberlain, Sr. Such acts therefore deserve an award of punitive damages

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demands judgment against Defendants:

- a. Compensatory damages in the amount of twenty one million dollars
- b. Punitive damages;
- c. Award costs of this action including attorneys' fees to the Plaintiff pursuant to 43 U.S.C. §1988; and
- d. Any such other and further relief as this Court may deem appropriate.

### **A JURY TRIAL IS DEMANDED**

DATED: New York, New York  
July 2, 2012

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